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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA, : CRIMINAL NO.:
Plaintiff, : JFM-06-0309
vs. :
JAMES DINKINS, et al., : Baltimore, Maryland
Defendant. : May 11th, 2009

* * * * *

The above-entitled case came on for motions before the
Honorable J. Frederick Motz, United States District Judge.

* * * * *

A P P E A R A N C E S

For the Government:

Kwame Manley, AUSA
Debra Dwyer, AUSA

For Defendant Melvin Gilbert:

Archangelo Tuminelli, Esquire
Jonathan Van Hoven, Esquire

For Defendant James Dinkins:

Gary Proctor, Esquire
Joseph Murtha, Esquire

For Defendant Darron Goods:

Thomas J. Saunders, Esquire
C. Justin Brown, Esquire

Christine T. Asif, RPR, CRR

Official Court Reporter

P R O C E E D I N G S

THE COURT: Good morning. We're here formally on a motion to reconsider the Batson motion that was filed by on behalf of Mr. Dinkins. And in light, because it -- the motion relied upon facts which we didn't discuss when we last discussed the Batson motion, I thought we'd have a new hearing.

Let me also bring you up to date. I don't know if you all -- I can't remember who knows what. As I predicted we've already lost one alternate who all the sudden remembered she's going to have a gallbladder operation sometime. One would have thought that -- and I always know it's going to happen. Ironically it's alternate No. 1. So what I'd like to re-ask you. I don't know whether people will be available, whether we should now call in another one or two to sit for a couple weeks. And we were talking about that last week. Then Mr. Proctor wanted three strikes to get rid of alternate No. 1. Well, that's now academic because alternate No. 1 is now gone. We ought to discuss that.

And the other thing is, I don't remember if it was in the questionnaire, it may be too late, and I don't know if there -- I don't read the newspaper much anymore, there may be a newspaper article between now and Wednesday. Maybe to call the jurors who are going to be picked just to remind

1 them or ask them not to read if they see something in the
2 newspaper about the case. But that's the three things I
3 have.

4 Let's start with -- I guess Mr. Proctor's set
5 forth the reasons he thinks there's was a Batson violation.
6 And, Mr. Manley, if you can respond.

7 MR. TUMINELLI: Judge, can I just ask you to
8 clarify, if you bring in two additional alternates, will
9 they go to the end of the alternates?

10 THE COURT: Sure.

11 MR. TUMINELLI: Okay.

12 MR. MANLEY: Thank you, Judge, we received the
13 motion to reconsider Batson as to Mr. Dinkins. And I just
14 want to respond to that and I have a number of points.
15 First of all, we obviously take this very seriously. A
16 Batson challenge is an allegation that we have engaged in
17 purposeful discrimination. And we believe it is wholly
18 without merit. And I want to outline a number of reasons
19 that we offered previously, and also some other facts about
20 this.

21 Juror 6 is African American. But the important
22 fact is that she's 29 years old, she's unemployed, her
23 mother and father, not a distant relative, not someone, a
24 neighbor, her mother and father have been involved in drugs
25 her entire life. She actually said her entire childhood.

1 Now, I'll get to the significance of being a mother and
2 father. Her husband had an assault charge, that assault
3 charge was dropped. When she was a teen she lost two
4 friends, both murdered in 1999 and in 2000. And I would
5 note, Your Honor, that in -- my calculation in 2000 she was
6 20. In 1999 she was 19. Obviously, we don't know her birth
7 date, so it may be off a little bit. But that's very
8 significant. When she was 19 and 20 she lost two friends
9 consecutively, murdered, shot dead.

10 And also, Your Honor, this was the juror that we
11 believed had a significant hardship, she has three children
12 -- actually, I'm sorry, Your Honor, she has four children,
13 age 10, 9, 6, and 5. And she expressed some concern about
14 having child care picking up children from school. We had a
15 long discussion about that. And Your Honor concluded that
16 you were not going to strike her for hardship as the
17 Government had requested. But you did note that you can use
18 a peremptory challenge if you want to.

19 THE COURT: I think I did.

20 MR. MANLEY: So that's where we're started from.
21 Now let me just say I've talked, Ms. Dwyer and I have talked
22 to over a dozen prosecutors in our office, and they all
23 looked as if, well, what's the issue? Why would you not
24 strike her? If she's 29 and unemployed, and have the mother
25 and father involved in drugs her entire life, Ms. Dwyer and

1 I would not have her on a normal drug case at all. And let
2 me explain the reason --

3 THE COURT: Let me just refresh my recollection,
4 you say involved in drugs, was it drug addiction or --

5 MR. MANLEY: We have no idea whether it is drug
6 addiction or drug using.

7 THE COURT: Did she use the word "involved"?

8 MR. MANLEY: She said, the exact words, my mother
9 and father used drugs my whole childhood. Now, whether
10 that's using drugs, just using drugs, or there's using drugs
11 selling drugs to buy drugs. We know that in almost all
12 cases people who are addicted engage in criminal activity so
13 they can get the money to use drugs. We don't know anymore
14 information. But the bottom of line is we've talked to a
15 number of people in our office, and we would stop right
16 there.

17 The defense, and particularly Mr. Proctor in his
18 response said that, well, when you look at the race neutral
19 reasons, the fact that her husband was charged with an
20 assault, the juror 6 said that they did a good job, meaning
21 that the criminal justice system did a good job because her
22 husband was charged with assault but the charges were
23 dropped. We look at that very differently than the defense.
24 We look at that as, one, her husband was charged as an
25 assault, was it domestic? I don't know. Was he involved in

1 hitting someone, shooting someone? We have no idea.

2 There's a big wild card here.

3 Two, it reminds us of a lot of the city cases
4 where assault cases are just dropped, statted, not pressed.
5 Three, it could have been a domestic case. If it was a
6 domestic case, of course you think they did a good job if
7 she was the victim and her husband was assaulted. We don't
8 know any of that. That's a big wild card. And the
9 Government, frankly, does not want wild cards.

10 Also, the fact that she said they did a good job,
11 what does that mean? The case was dropped. So he was
12 falsely charged, he shouldn't have been charged. It means
13 there was a prosecutor that filed an indictment that should
14 not have. There was a commissioner who accepted a statement
15 of probable cause that should not have. There's a police
16 officer who in some way got this through to a charge that
17 maybe shouldn't have. We don't see that as a positive
18 thing. But the defense says that that suggests that there's
19 no animus toward the Government. We believe that there's
20 great likelihood that that is a problem for the Government.

21 Now, the next thing that the defense does is they
22 say, well, let's look at the other people, there are other
23 people who had family members who had some problems. Well,
24 let's look at those people. The first person they say is
25 No. 190. By my count No. 190 is a white female. They

1 indicated it's a white male, but in any event, her brother
2 was arrested for domestic violence. We think that's very
3 different from having mother and father involved in drugs,
4 two friends murdered, and a husband with assault charges.

5 But the most important factor about this white
6 female is that she's married to a deputy sheriff, a deputy
7 sheriff of the Baltimore City Police Department. She as a
8 MBA. She has other family members who are in government.
9 We think she's going to be much more favorable to the
10 Government, particularly given the fact that she's married
11 to a deputy sheriff.

12 The other person they mention is 434, a white
13 female who says her ex-husband was convicted of selling a
14 handgun. Well, No. 434 is also from Wicomico County and she
15 said gangs are trouble. She said it in her statement, gangs
16 are trouble. She said she can be impartial, but she said
17 gangs are trouble. We think that she's going to be much
18 more favorable to the Government.

19 Also, they noted 323, who is a black male. And
20 it's interesting that they note this, because basically
21 they're saying, compare the Government's response to 323 is
22 a black male, they should have struck 323 if they were
23 trying to be consistent. But 323 is a black male, so if we
24 would have struck 323 they would have been mad at us for
25 striking 323. 323 said that he had a brother who had a CDS

1 offense. I would note, Your Honor, 323's the person who
2 came in, black male, very nice suit, clean cut, his favorite
3 newspaper's the Wall Street Journal. He's going to be very
4 favorable to the Government.

5 And I know that sometimes we assume that the more
6 black people you have on the jury, the more beneficial it is
7 to the defendants, but I can assure you that there are a lot
8 of black people, as an African American, I can say this, who
9 are not going to identify with these defendants. And I
10 think one of them is someone who reads the Wall Street
11 Journal and money magazine, who's trying to advance himself
12 within the world of business. He's not going to look at
13 these three individuals favorably at all.

14 The point here, Your Honor, is that we had race
15 neutral reasons for striking juror No. 6.

16 THE COURT: I ask this because you mentioned the
17 age under 29, do you know how old the other people -- is
18 that --

19 MR. MANLEY: Yes, that's very significant.
20 Because she would be -- No. 6 would be the youngest person
21 on the jury. The youngest person right now, Your Honor --
22 well, let me give you the ages 37, 67, 43, 52, 49, 61, 40,
23 49, 34, 49, 70. These are not 29-year-olds. And we struck,
24 for Your Honor's understanding, we struck a number of young
25 people. We struck a number of young people who were the

1 same age or younger.

2 THE COURT: That's fine. That's fine. Mr.
3 Proctor.

4 MR. PROCTOR: Thank you, Judge. I just want to go
5 into a little bit of background. As the Court will recall
6 we twice tried to pick a jury the first time around the
7 government struck 7 out of 8 people of color. One out of
8 one Asian male, and one out of one Hispanic females for a
9 total of 9 out of 10. Second time around the Government
10 reversed one of the black females. So we have six out of
11 eight African Americans, one out of one Asian females, and
12 one out of one Hispanic females. I'm sorry, Asian males, if
13 I said that I apologize.

14 The Government talks about the age being 29. I
15 have several troubles with that. First of all, Judge, are
16 we saying we can never have young people on the jury if the
17 defendants happen to be young? I'm not sure if that isn't
18 another class worthy of protection from the Court. Second
19 of all, Mr. Dinkins is 36, Mr. Gilbert is 34. So 29 years
20 old means she is five years younger than Mr. Gilbert, seven
21 years younger than Mr. Dinkins. By contrast juror No. 5 is
22 37, so one year apart from Mr. Dinkins, three years apart
23 from Mr. Gilbert. Much closer in age. Juror No. 176 is 43,
24 the same in age disparity on the other side as Mr. Dinkins.

25 THE COURT: What are you talking about, they don't

1 want young people because they don't think they have mature
2 judgment. I don't understand what you're talking about.

3 MR. PROCTOR: I heard them say they don't want
4 young people because they don't want people to identify with
5 these defendants, being the same age and similar background.

6 MR. MANLEY: We don't want young people because we
7 don't believe they have the full life experiences to hold
8 someone's fate in their hands. And we do not think young
9 people --

10 THE COURT: I had understood you were saying that,
11 but maybe I was wrong.

12 MR. PROCTOR: And, Judge, it's significant that it
13 took the Government a day to come up with this. You know,
14 Miller-El talks about the Government must stand or fall on
15 their race neutral reasons. None of this was mentioned on
16 Thursday. The first time it occurs to them is Friday
17 morning, a day later was the first time I ever heard of it.
18 Because when I pointed out the inconsistencies of their
19 treatment of juror No. 6, vis-a-vis the other people on the
20 jury, they scratched around and that's what they came up
21 with. And if we give them another week, they'll think of
22 something else. Again --

23 THE COURT: Why don't you cut it out, you didn't
24 raise the issues. You're going to tell me you didn't have
25 the time, you could have been taking notes. Don't attack

1 people like that, another week if they have time to think
2 about it. I don't want any personal attacks, if you've got
3 a reason you state the reason.

4 MR. PROCTOR: The reasons --

5 THE COURT: I'm getting fed up with -- if there's
6 any personal attacks during this case, whoever does it is
7 going to be in trouble with me, whether it's from the
8 Government or the defense. This is an important case, it's
9 a serious case. And stay away from personal attacks.

10 MR. PROCTOR: I apologize, it wasn't meant as a
11 personal attack.

12 THE COURT: Please -- the apology's accepted.

13 MR. PROCTOR: It wasn't meant that way, Judge, my
14 point is Monday morning quarterbacking should be treated --

15 THE COURT: It's not Monday morning
16 quarterbacking. You filed a written motion and they
17 responded to it after having had a chance to see what you
18 had to say. It's not Monday morning quarterbacking at all.

19 MR. PROCTOR: Okay. I'll move on. Judge, the
20 hardship, I wrote in my notes, as that juror was being
21 examined that it was --

22 THE COURT: I thought there was a potential
23 hardship. I said he could exercise his peremptory, because
24 she did have the mother take care of them, but she was going
25 to have to leave at 4:30 or 5:00, there was going to be a

1 restraint upon the time. Fortunately, we'll be finished --
2 hopefully we'll be finished by 4:30 or 5:00. And we might
3 have a juror who's thinking about her children not about the
4 evidence. They didn't say it the other day, but I said it.

5 MR. PROCTOR: Again, Mr. Manley asked her more
6 than once, would that present a hardship? She said it can
7 be worked out. I wrote down, it can be worked out. Judge,
8 juror No. 254 has two children who are in private school.
9 Juror No. 275 has three children, 14, 13 and 10. Juror No.
10 363 has one child age 6. Juror No. 376 has three children,
11 one of which is 13. Juror No. 384 has two children, age 9
12 and 5. Juror No. 323 has four kids, two are adults, one is
13 17, one is 15. Again, Judge, this does not differentiate
14 her from all the people that are serving on our jury.

15 THE COURT: I can't recall all that, it did during
16 the jury selection process. Because we focused upon people,
17 I remember there was a grandfather who I excused for cause
18 because I think his daughter's going to have a baby, and the
19 daughter has another child with special needs. I mean, I
20 thought -- I can't tell you that I totally recall each and
21 every family circumstance. But if the ones that you have
22 mentioned caused a problem, it would have been flushed out
23 during the jury selection process.

24 MR. PROCTOR: And I think it's significant that
25 none of the other jurors were asked about their child care

1 situations.

2 THE COURT: I'm not sure they were.

3 MR. PROCTOR: They weren't.

4 THE COURT: Well, maybe they said there wasn't a
5 problem. If they didn't say it was a problem, there was
6 nothing to ask about.

7 MR. PROCTOR: I didn't hear this juror say it was
8 a problem either, she said I would have to --

9 THE COURT: She first said it was a problem, as I
10 recall, but be that as I may.

11 MR. PROCTOR: She said, I would have to make
12 arrangements, and her answer was, it's doable, it's
13 workable. The assault charge the Government mentions, we
14 don't know whether this happened, we don't know whether that
15 happened. Again, they could have asked. If it was a
16 significant --

17 THE COURT: Now, wait a second, her husband had an
18 assault charge and it was dropped, and she thought that he
19 was treated right, I mean --

20 MR. PROCTOR: Right.

21 THE COURT: Why isn't that ipso facto of
22 everything else aside.

23 MR. PROCTOR: And her husband was honorably
24 discharged from the military, Judge, this is not someone
25 who's out running the neighborhood.

1 THE COURT: Well, apparently you don't run
2 homeland security. A lot of honorable people are
3 terrorists, according to them. People been honorably
4 discharged, not anymore, I forgot that's gotten changed.

5 MR. PROCTOR: And lastly, Judge, when the
6 Government was talking about differentiating, one of the
7 jurors answered gangs are trouble. I don't see any jurors
8 saying gangs aren't trouble. Again, it's a pretextual
9 reason.

10 THE COURT: All right. This is, upon reflection,
11 a frivolous motion. We shouldn't have reassembled to
12 discuss it. The motion's denied.

13 MR. PROCTOR: I'm not quarrelling with your
14 ruling, Judge, I would ask that the jury questionnaires be a
15 part of the record of the remaining jurors, and juror No. 6,
16 so that an appellate court later will be able --

17 THE COURT: Sure. They should be part of the
18 record. They absolutely should be. And they will be
19 sealed.

20 MR. PROCTOR: Does Your Honor still have a clean
21 copy or would you like me to provide one?

22 THE COURT: I don't have a clean copy.

23 MR. MANLEY: We can make sure that the clerk has
24 a --

25 THE COURT: I'm sure the jury commissioner does.

1 MR. MANLEY: Yes, jury commissioner should.

2 THE COURT: All right. Now, let's talk about the
3 practical issue, we've already lost a juror. I had raised
4 the possibility the other day of picking two more
5 alternates. And as usual things weren't as simple. And I
6 understood I wasn't -- I understood Mr. Proctor's position
7 on this, but it's now mooted, because I think the juror who
8 was -- has the problem, the alternate, I think is alternate
9 No. 1, so 323 or whoever the African American male is now 1.
10 How many alternates do we have left?

11 MR. MANLEY: Right now, Your Honor, if we take out
12 434, my count is we have one, two, three, four, five, six
13 potential alternates. And in this order, 323 --

14 THE COURT: How many -- and we've already
15 selected --

16 MR. MANLEY: We've already selected three of
17 those, we've already told 323, 109 and 47, the people that
18 we would have to tell now are 124, 406 and 422.

19 THE COURT: Now, can I give everybody an
20 additional strike and --

21 MR. PROCTOR: As long as we get a strike, we have
22 no problems with those other people being added to the end.

23 THE COURT: You want to strike somebody who's
24 already on?

25 MR. PROCTOR: Yes, sir.

1 MR. MANLEY: These are alternates.

2 MR. PROCTOR: Yeah, we want to strike an
3 alternate, not someone who is one of the 12.

4 THE COURT: Suppose I pick five alternates, what's
5 the rule say, how many strikes --

6 MR. TUMINELLI: Rule still requires you to do it,
7 Judge.

8 THE COURT: Two?

9 MR. TUMINELLI: For two jurors one strike, for
10 three or four jurors, two strikes, five or six, three
11 strikes.

12 MR. PROCTOR: So if you add five, assuming the
13 Government doesn't strike any, we would still be left with
14 four.

15 THE COURT: But you don't want to use your strike
16 against one of them, you want to use it against somebody
17 else.

18 MR. PROCTOR: One of the alternates, yes, sir,
19 which we would have done had we known there were going to be
20 five from the start.

21 THE COURT: That's exactly the same problem we had
22 the other day, this changing of the rules of the game
23 afterwards. We'll go with three alternates and hope we
24 don't lose anybody.

25 MR. MANLEY: That's fine, Your Honor. Thank you.

1 Let me just bring up one other issue, Your Honor --

2 THE COURT: Does anybody mind if I have the jury
3 commissioner remind people -- either remind or tell them if
4 they see anything about this in the newspaper not to read
5 about it. Sometimes people write about the trials on the
6 day of the trial. I don't -- was there anything in the
7 Sunday papers? I didn't see anything.

8 MR. MANLEY: No.

9 MR. PROCTOR: No, sir.

10 THE COURT: Okay. Yes?

11 MR. MANLEY: Judge, there's only one other thing
12 that I -- actually, I don't even think we need to address
13 that now. We're fine. Thank you, Judge.

14 THE COURT: Okay. A motion was just filed by Mr.
15 Goods about the statement.

16 MR. MANLEY: That's what I was going to say, but
17 we've had a discussion with them. They filed a motion
18 asking for rule of completeness, they want to include more
19 parts of the call. We're fine with playing the whole call.
20 So we think we can work out whatever other complete parts of
21 the call they should to include. And also, Your Honor, just
22 want to note, these are calls recorded from the institution,
23 it clearly says that the calls will be monitored and
24 recorded. And we're open to including other parts of the
25 call, that's fine with us.

1 MR. BROWN: Well, we're not challenging the calls
2 on a 4th Amendment grounds, obviously. What we're saying is
3 that if the Government takes the parts of the calls that it
4 thinks are admissible, whether they're a confession and
5 whether they're relative to the case, that we be allowed to
6 supplement those parts of the calls with other parts of the
7 calls that puts that into perspective.

8 THE COURT: What's more complete than all of the
9 call?

10 MR. BROWN: I would argue, Your Honor, that there
11 are parts of the calls that are not relevant to this case.
12 It might be extremely prejudicial. For example --

13 THE COURT: Okay. Well, we'll focus upon that.

14 MR. MANLEY: We'll get that worked out, Your
15 Honor. We want the whole call in. I know why they don't
16 want the whole call in. But we'll work on it.

17 THE COURT: Well, what's the issue?

18 MR. MANLEY: Well, I mean the issue --

19 THE COURT: What does he think -- what do you --

20 MR. BROWN: Your Honor, here's our concern,
21 without getting --

22 THE COURT: I'm just asking so I can think about
23 it.

24 MR. BROWN: Okay. The Government is alleging that
25 Mr. Goods was fixing an alibi in some of these calls. And

1 we think it's critical that the context of that was that he
2 did have an alibi and he felt, and it's repeated throughout
3 the calls -- well, he thought that his potential -- the
4 location where he was, and the person who could say that he
5 was there, he didn't think that that was a reliable alibi.
6 And he was allegedly trying to create a better alibi.
7 Which, Your Honor, is very different, it's very different
8 from someone who's saying, I did it and I got to come up
9 with an alibi.

10 THE COURT: No, I understand.

11 MR. BROWN: He was concerned that no one would
12 believe his baby mother, because you know it's perhaps
13 common knowledge that someone's -- the mother of someone's
14 child will do anything for them. And he was concerned that
15 maybe that wasn't good enough. That's very different from
16 someone who was saying I did it, I got to come up with
17 something, cover my back.

18 THE COURT: So what's the 403 issue that you're
19 worried about? Let me hear from the Government what they
20 think you think the 403 issue is.

21 MR. MANLEY: Well, we think that -- well, there
22 are two sets of calls. The call that Mr. Goods' -- counsel
23 for Mr. Goods is referring to is a call where he says that
24 he wants his baby mother to come in and say he was at this
25 place at the time of the murder, but he's worried. He's

1 worried because she's not going to be believable. And he
2 can't use her. And he's thinking, well, who else can I get?
3 Well, I can have this person come in, but she's not going to
4 be able to say this. What about this person? There's a
5 whole stream of consciousness in the entire call, which we
6 hope we can play the entire call, where he is worried that
7 he can't come up with a witness because everybody is going
8 to think his baby mother is lying for him.

9 And if Your Honor remembers from a suppressed part
10 of the case earlier, there are other calls which obviously
11 won't come in, where he was trying to get people to lie for
12 him. Now, that stuff was excluded. But this call is
13 clearly in. So we want to play the entire call. We want to
14 make sure it's as complete as possible.

15 THE COURT: What do you think the 403 is?

16 MR. MANLEY: There is no 403.

17 MR. BROWN: The 403. If I may have a moment, Your
18 Honor, the 403 issue is focused on another phone call, which
19 first of all, it's extremely difficult for us to even
20 understand what is on that phone call. So we have some very
21 real concerns about trying to -- to deal with that issue
22 when we don't know what that phone call says. The
23 Government is purporting that the phone call says that there
24 is a -- what I call in the motion, a mystery photo, or
25 something like that, that's being discussed. And upon

1 hearing of this photo that was at the crime scene, Mr. Goods
2 expresses some frustration and has some strong words. I
3 want to know how that is probative of his guilt. Without
4 being -- without being extremely prejudicial, unfairly
5 prejudicial, because it raises this issue that there's some
6 kind of photograph out there.

7 Now, if the Government believes that there is a
8 photograph, and they can offer other evidence to that
9 effect, I have no problem with that. But to bring that
10 specter into this trial, I think that's --

11 THE COURT: Well, if he thinks there's a
12 photograph and it causes a problem for him, that's the
13 relevance. There would be an instruction that there is no
14 photograph.

15 MR. MANLEY: And, Judge, let me give you --

16 THE COURT: But we'll cross that --

17 MR. MANLEY: But let me give you some more context
18 on this call. It's crystal clear, and if the defendant's --
19 if counsel want to come with us to our office, we'll let you
20 hear the entire call in 30 seconds. It's crystal clear this
21 is what happens, he's talking casually to a friend, hey, how
22 are you? Want to buy some sneakers. What's going on on TV,
23 da-da-da. And then he says, the friend says, hey, you know
24 there's someone who saw you outside the night of the Dowery
25 murder. And he says, he's talking all casual. He says,

1 what? I'm going to kick his ass. Where is he? He has the
2 picture of me? I mean, it is dramatic. And we plan to play
3 it. And the reason we plan to play it, because it shows his
4 state of mind.

5 THE COURT: Sure.

6 MR. MANLEY: He thinks that there's someone else
7 out there who has his picture the night of the murder, and
8 he is pissed. And says -- he's going to cause harm to this
9 person, not just --

10 THE COURT: Okay. Okay.

11 MR. MANLEY: -- oh, tell him he shall not do that.
12 I mean, it's serious and it's going to be a major part of
13 our case.

14 MR. BROWN: My concern, Your Honor, is by bringing
15 into this case that there is a photo out there --

16 THE COURT: Oh, no, no, no, if there is no photo,
17 I will instruct the jury there is no evidence there was a
18 photo. But if he thinks there was a photo and responds that
19 way. That itself is material. Okay. Anything else?

20 MR. MANLEY: No, Your Honor.

21 THE COURT: See you all at 11:30 Wednesday.
22 Looking forward to it.

23 (The proceedings were concluded.)

24 I, Christine Asif, RPR, CRR, do hereby certify
25 that the foregoing is a correct transcript from the
 stenographic record of proceedings in the above-entitled
 matter. _____/s/_____

Christine T. Asif, Official Court Reporter

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